

REMARKS

Claims 67-68 have been added to this case. Thus, claims 33-36, 38-62, and 64-68 are now pending in this case.

Paragraph number 4 in the January 2, 2002 Office Action was not correct when it stated that the pending claims were 33-54 and 56. Prior to the present Amendment, the pending claims were claims 33-36, 38-62, and 64-66.

The specification has been objected to under 35 USC § 132 because it allegedly introduces new matter into the disclosure. In making this objection, the Examiner referred to an Amendment that was filed on October 15, 2001. No such Amendment, however, has been filed in this case. Applicants previous amendment was filed on October 5, 2001, and it did not introduce the subject matter that the Examiner alleges is new matter. Apparently, the reasons behind this rejection are directed at the wrong patent application, probably U.S. Patent application Serial No. 09/677,636.

In applicants' Amendment that was filed on October 5, 2001, applicants indicated that the previous response was also directed to the wrong application. Accordingly, applicants urge the Examiner to please furnish applicants' attorney with an Office Action that is directed to the proper application. Applicants have now received two consecutive Office Actions that have been directed to the wrong case.

Applicants note that the attorney docket number that has been assigned to this case is not correct. This application should have attorney docket number 48317USA5G026, not 48317USA5L031. The Serial Number for this case, 09/677,637, has been assigned to the application having docket number 48317USA5G026. Please see the attached copy of the post card receipt. Please correct the docket number.

Claims 33-54 and 56 of this application have been rejected for double patenting. To the extent that any of the claims in the present application define subject matter that would have been obvious over claims in a copending application, applicants will either cancel those claims or file a Terminal Disclaimer to overcome this double patenting rejection.

Claims 33-56 and 56 have been rejected as being obvious over British Patent 2,072,516 to Simpson in view of U.S. Patent 3,191,618 to McKim, U.S. Patent 4,934,362 to Braun, and French Patent 1,209,475. In making this rejection, the Examiner asserts that claim 33 includes the limitations of having "cross-members being slightly recessed beneath the seal surface." This limitation is not present in claim 33 of this application. Apparently, the Examiner is examining the

claims in one of applicants' copending cases (U.S. Serial No. 09/677,636?) in making this rejection. Accordingly, applicants respectfully request that the Examiner consider the claims that are pending in the present case in conducting this examination.

The present application comprises a flapper-style exhalation valve that includes a valve cover that is disposed over the valve seat and that comprises an opening and a fluid-impermeable ceiling. The opening is disposed in the path of fluid flow during an exhalation. The fluid-impermeable ceiling is higher above the free segment of the flap's peripheral edge than above its stationary segment. During an exhalation, the flap's free portion lifts from the seal surface and moves towards the fluid-impermeable ceiling so that exhaled air can exit through the opening in the valve cover. The use of a valve and valve cover having the structure of applicants' present invention is neither taught nor suggested in any of the references cited in the Office Action.

The Simpson patent does not disclose a valve cover, the McKim patent does not disclose a valve cover or a flexible flap (McKim discloses a reed valve for a two-cycle engine), the Braun patent does not disclose a valve cover that has a fluid impermeable ceiling that increases in height, and the French patent does not disclose a valve cover or a flexible flap. The Examiner has not established that the McKim reed valve qualifies as a "flexible flap" as this term is defined in the present application (see page 7, lines 22-25). McKim's valve is used inside a 2-cycle engine, and therefore would have no reason or need to employ a valve cover. Further, there is no evidence of record, which shows that a person of ordinary skill would have combined the teachings of McKim with those of Simpson. Although Braun's valve uses a flexible flap and a valve cover, its valve cover is in the form of a planar grill. It does not have a fluid-impermeable ceiling that varies in height. The French patent also does not teach or suggest the gist of the present invention, and there also is no evidence that a person of ordinary skill would have been motivated to combine its teachings with those of Simpson. The French patent discloses a valve that would be used in a high-pressure annular canal through which a liquid flows. The valve has a membrane that changes shape (radially extends) as shown in Figures 1-3 under the pressure of a liquid that moves through the valve. Thus, none of the documents teach or suggest the combination of elements that comprise the present invention. Without any teaching or suggestion of using the valve cover of the present invention in conjunction with a flapper-style valve, the obviousness rejection cannot be properly sustained under the terms of 35 USC § 103.

Accordingly, please favorably reconsider this rejection in light of the claims that are pending in this case and allow this application at an early date.

Respectfully submitted,

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Date

By: 

Karl G. Hanson, Reg. No.: 32,900

Telephone No.: 651-736-7776

Office of Intellectual Property Counsel
3M Innovative Properties Company
P.O. Box 33427
St. Paul, MN 55133-3427
Facsimile No.: 651-736-3833